IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9414 OF 2005

Hindustan Breweries and
Bottling Limited ... Petitioner

versus

The Superintendent State Excise,
Thane and others ... Respondents

Ms.V.B.Thadani for petitioner.
Mr.Sonpal, AGP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th February 2006

PC :

1. Heard Ms.Thadani for petitioner and Shri Sonpal for respondents. The petitioner is a Limited Company. It is an holder and licensee of licences under the Bombay Prohibition Act, 1949. It manufactures various brands of Beer.

2. The petitioner is aggrieved by an order dated 5th October 2005 which is issued by the Superintendent, State Excise, Thane. The submission of the petitioner is that this order is issued on the basis of the instructions from the Commissioner, State Excise dated 17th May 2004. The State Excise Commissioner purported to

restrict Breweries from using re-cycled bottles engraved with the name of any other brewery or their brands.

3. The submission of Ms.Thadani appearing for the petitioner is that the aforesaid instructions of the Commissioner have been challenged in Writ Petition No.5352 of 2004 by M/s.Aurangabad Breweries Limited, Aurangabad and this Court has stayed the operation and effect of the said instructions. Her next submission is that when similar pleas were raised by the present petitioners and the order of the Aurangabad Bench pointed out, they were informed by the first respondent that the order passed by the Aurangabad Bench is restricted to the petitioner before the Aurangabad Bench and the said order can have no general application.

4. When this matter was adjourned on the last occasion Shri Sonpal for the respondents took time to take instructions.

5. Shri Sonpal has placed on record an affidavit of Deputy Commissioner of State Excise wherein a specific plea is raised that respondents desire compliance with Bombay Prohibition Act and more

particularly Rule 11(5) of The Maharashtra Manufacture of Beer and Wine Rules, 1966 dealing with Bottling and Packing. Shri Sonpal submits that the petition is, therefore, misconceived and according to him use of re-cycled bottles is prohibited under Rule 11(5) of these Rules. In his submission, the order passed by the Aurangabad Bench does not refer to Rule 11(5).

6. In the light of the above submissions, Rule 11 of the Maharashtra Manufacture of Beer and Wine Rules, 1966 will have to be seen. It reads as under :-

> " 11. BOTTLING AND PACKING :-
>
> (1) No beer or wine shall be bottled by the licensee except in the presence of the Brewery Officer or, as the case may be, the Manufactory Officer or some other officer deputed for the purpose.
>
> (2)(a) All bottles and packages containing Beer or Wine to be sold in the State of Maharashtra shall bear a label showing the name of the manufacturer, the name of the Beer or Wine, the place of manufacture, the alcohol percentage, the batch number of manufacture of Beer or Wine, the month and year of Manufacture, the statement "FOR SALE IN MAHARASHTRA STATE ONLY".
>
> Explanation :- Sales Tax on beer or wine sold through FL-II Vendor’s licence issued under rule 25 of the Bombay Foreign Liquor Rules, 1953, levied under

Government Notification, Finance Department No.STA-1097/CR-1/Taxation-2, dated the 8th December 1998 is also recoverable over and above Maximum Retail Price on such beer and wine manufactured prior to the 9th December 1998 and sold on or after the 9th December, 1998.

(b) All bottles and packages containing Beer or Wine to be sold out of the State of Maharashtra shall bear a label showing the name of manufacturer, the name of the Beer or Wine, the place of manufacture, the alcoholic, percentage, batch number of manufacture of Beer or Wine, the month and year of Manufacture and statement "NOT FOR SALE IN THE STATE OF MAHARASHTRA".

(3) The guaranteed fluid contents of each bottles, cask or keg shall be clearly indicated in bold letters on the label.

(4) All labels required to be used shall be submitted to the Director for his approval. No label shall be used unless it is approved by the Director.

(5) The bottles to be used for the purpose of bottling beer or wine shall be new and properly cleaned and washed.

(6) Immediately after the bottles, casks or kegs are filled up, they shall be corked, capsuled and labelled and removed to the finished store room.

(7) The capsules shall be metallic, and shall be firmly fixed in position by capsuling machine or any other suitable appliance. The capsule shall bear the name of the manufacturer and the brand.

(8) An account of the transactions in the bottling room shall be maintained in Form BR.VI."

7. The said Rule deals with bottling and packing

and it ensures that all bottles and packages bear the labels incorporating details as above. The labels have to be submitted to the Commissioner for his approval.

8. In the instant case, the issue is with regard to bottles to be used for the purpose of bottling beer or wine. In my view, the issue being as to whether the petitioner has complied with Rule 11(5) or not, it would be appropriate that the said issue is examined by respondent no.2 in the light of the submissions of petitioner and also after considering the mandate of the above Rules. The petitioner's contention that due to the pendency of the petition before the Aurangabad Bench and the order passed therein it would not be open for the Commissioner to take up the issues covered therein for consideration, is also kept open. The petitioner should appear before the Commissioner and after the Commissioner hears the petitioner and/or it's representative, he should pass a reasoned order without in any manner relying upon the communication dated 5th October 2005. The Commissioner to also take into consideration the affidavit filed before this Court and more particularly the stand taken with regard to compliance with Rule 11(5). Petition

disposed of.

(S.C.DHARMADHIKARI, J.)